International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO and Engineers Union, Local 444, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO (Paramax Systems Corporation, Formerly known as Surveillance and Fire Control Systems Division and the Systems Management Unit of Shipboard and Ground Systems Group, Unisys Corporation) ***and*** **Lawrence Ferriso.** Case 29–CB–8055

August 27, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

On December 2, 1992, Administrative Law Judge Steven Davis issued the attached decision. The Respondents filed exceptions and supporting briefs, the Charging Party filed cross-exceptions and a supporting brief, and the General Counsel filed a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions, cross-exceptions, and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order and to adopt the recommended Order as modified.[1]

1. An issue in this case is whether the Respondents violated Section 8(b)(1)(A) of the Act by failing to provide the Charging Party, Lawrence Ferriso, with sufficient information from which Ferriso could intelligently decide whether to challenge the amount of agency-shop fees he was required to pay to the Respondents under the applicable union-security clause.[2]

In March 1991, the Respondents published in their newsletter a *Beck* notice to agency-shop fee payers and nonmembers describing the "procedures [the] IUE has established for those persons who seek a reduction of the amounts to be paid based on union expenditures for non-collective bargaining matters." Ferriso followed the instructions in the notice and, on April 24, 1991, wrote the Respondents requesting that his dues be reduced to exclude "nonchargeable" expenses, i.e., those amounts unrelated to collective bargaining. On June 7, 1991, the Respondent International Union wrote Ferriso, informing him of the amount of his current, biweekly, agency-shop fees, and explaining how these fees were distributed among the International, Local, and District Union. The June 7 letter also listed the amount that Ferriso's fees were being reduced to exclude nonchargeable expenses.[3]

As found by the judge, the June 7 letter enabled Ferriso to calculate the amount that the Respondents proposed reducing his fees. The letter did not, however, describe the Respondents' major categories of expenses that were funded under the union-security agreement, nor did it specify which categories, or portions of categories, the Respondents considered chargeable or nonchargeable.

The June 7 letter notified Ferriso that he had 15 days to challenge the Respondents' calculations. Thereafter, Ferriso informed the Respondent Local that he needed additional information to determine how the June 7 calculations were made. Specifically, Ferriso asked the Local Union for the opportunity to examine its books and records. Because Ferriso and the Respondent Local could not agree on a time for this examination, Ferriso never received access to the requested information.

Rather than invoking the Respondents' internal arbitration procedure to challenge their calculations, Ferriso filed an unfair labor practice charge with the Board. The charge alleged that the Respondents unlawfully had refused to provide him with sufficient information so that he could determine whether to challenge their June 7 tabulations.[4]

The General Counsel alleged, and the judge found, that the Respondents violated Section 8(b)(1)(A) of the Act by failing to provide Ferriso with detailed information concerning their major categories of expenses, distinguishing between representational and nonrepresentational expenses. For the following reasons, we agree.[5]

In *California Saw & Knife Works*, 320 NLRB 224 (1995), the Board held, amongst other things, that when nonmembers object to the use of moneys that they are required to pay under a union-security agreement, the union must reduce the fees by excluding nonchargeable expenses. The union also must apprise these objectors of the percentage of the fees that are being reduced and specify "the basis for the calculation, and the right to challenge these figures." Id. at 233. When dues-paying nonmembers object, *California Saw* further requires that the union provide them with

[1] We shall modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

[2] The General Counsel did not challenge the legality of the union-security clause nor, as discussed below, the sufficiency of the notice in Respondents' March 1991 newsletter under *Communications Workers v. Beck*, 487 U.S. 735 (1988).

[3] The letter informed Ferriso that the following portion of his current fees were chargeable: 58.1 percent of his fees to the International, 65 percent to the District, and 98.9 percent to the Local.

[4] In June 1991, the Respondents reduced Ferriso's agency-shop fees consistent with their June 7 calculations.

[5] For the reasons stated by the judge, we also agree that the Respondents' deferral argument lacks merit. See also *California Saw & Knife Works*, 320 NLRB 224, 276–277 (1995).

sufficient information so that they can intelligently decide whether to challenge the union's calculations. Specifically, under *California Saw*, the union is required to disclose to objecting nonmembers a breakdown of their calculations by major categories of expenditures—designating those categories which it claims are chargeable and nonchargeable to the objectors. Id. at 239–240 and cited cases.

Here the Respondents clearly failed to satisfy their obligation under *California Saw*. They did not provide Ferriso with a breakdown of their major categories of expenditures or differentiate between chargeable and nonchargeable expenses. Indeed, the Respondents presented him with virtually no information of a descriptive nature from which Ferriso intelligently could determine whether to contest their calculations. Accordingly we adopt the judge's finding that the Respondents thereby violated Section 8(b)(1)(A) of the Act.[6]

2. The General Counsel additionally alleged—and the judge found—that the Respondents violated Section 8(b)(1)(A) of the Act because the information they were required to provide Ferriso was not verified by an independent auditor. The Respondents except, arguing that independent verification is not required. For the reasons stated in *California Saw*, we agree with the Respondents and dismiss this allegation of the complaint. 320 NLRB 240–242.[7]

ORDER

The National Labor Relations Board adopts the recommended order of the administrative law judge as modified below and orders that the Respondents, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO, and Engineers Union, Local 444, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO, their officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

"(a) Providing nonmember objectors with financial information which provides them with information which is insufficient for them to make an informed choice as to whether to file a challenge to any of the expenses incurred by the Respondents."

2. Substitute the following for paragraph 2(a), (c), and (f).

"(a) Provide Lawrence Ferriso and all other objecting nonmembers with detailed information concerning the breakdown of the major categories of expenses, distinguishing between representational and nonrepresentational expenditures of the Respondents."

"(c) Within 14 days after service by the Region, post at their offices copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 22, 1991."

"(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply."

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to provide objecting nonmembers with proper information which is sufficient for them to make an informed choice as to whether to file a challenge to any of the expenses incurred by us.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide Lawrence Ferriso and other objecting nonmembers with detailed information concerning the breakdown of our major categories of expenses, distinguishing between representational and nonrepresentational expenses.

WE WILL refund, with interest, all fees and assessments paid by Lawrence Ferriso which were not properly chargeable to him within the meaning of *Communications Workers of America v. Beck*, 487 U.S. 735

[6] The burden was on the Respondents to provide Ferriso with the requested information. We agree with the judge that Ferriso had no obligation to request to see the Respondents' books.

[7] We note, however, that under *California Saw* the Board will examine whether a union's method of verifying its calculations satisfies the union's duty of fair representation. Id. at 241.

(1988), as expenditures for collective-bargaining purposes.

INTERNATIONAL UNION OF ELECTRONIC, ELECTRICAL, SALARIED, MACHINE AND FURNITURE WORKERS, AFL–CIO

ENGINEERS UNION, LOCAL 444, INTERNATIONAL UNION OF ELECTRONIC, ELECTRICAL, SALARIED, MACHINE AND FURNITURE WORKERS, AFL–CIO

Jacquelyn Knight and *Saundra Rattner, Esqs.*, for the General Counsel.

Sheldon Engelhard, Esq. (Vladeck, Waldean, Elias & Engelhard, P.C.), of New York, New York, for Respondent Local 444.

Robert Friedman, Esq., of Washington, D.C., for Respondent International Union.

Hugh L. Reilly Esq., National Right to work Legal Defense Foundation, of Springfield, Virginia, for the Charging Party.

DECISION

STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge. Pursuant to a charge filed by Lawrence Ferriso, an individual, on July 22, 1991, a complaint was issued on October 11, 1991, against International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO (International), and Engineers Union, Local 444, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO (Local).

The complaint alleges essentially that Charging Party Ferriso objected to having his union-security payments spent on nonrepresentational activities, and requested that such payments be reduced by such amounts.

It is alleged that Respondents International and Local violated Section 8(b)(1)(A) of the Act by failing and refusing to disclose to Charging Party Ferriso certain detailed information concerning the breakdown of the major categories of expenses, distinguishing between their representational and nonrepresentational expenditures, and by failing and refusing to verify such information by an independent auditor.

Respondents' answers deny the material allegations of the complaint, and set forth certain affirmative defenses, which will be discussed, infra. On June 11 and 12, 1992, a hearing was held before me in Brooklyn, New York.

Upon the evidence presented in this proceeding, and my observation of the demeanor of the witnesses and after consideration of the briefs filed by all parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Employer, Paramax Systems Corporation, formerly known as Surveillance and Fire Control Systems Division and the Systems Management Unit of Shipboard and Ground Systems Group, Unisys Corporation, a Pennsylvania corporation, having its principal office and place of business in Great Neck, New York, is engaged in the manufacture, sale, and distribution of computer and electronic equipment to the United States Department of Defense, and to commercial customers. During the past year, the Employer manufactured, sold, and shipped computer and electronic equipment valued in excess of $50,000 to the United States Department of Defense, and purchased and received at its Great Neck facility electronic components and other products valued in excess of $50,000, directly from points outside New York State. Respondents admit, and I find, that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondents admit, and I find, that they are labor organizations within the meaning of Section 2(5) of the Act. In addition, Respondents admit that District Council 3, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO (District) is a labor organization within the meaning of Section 2(5) of the Act.

II. THE FACTS

Respondents and the Employer have been parties to collective-bargaining agreements for many years. Respondents have jointly been recognized as the exclusive collective-bargaining representative of the employees in the following collective-bargaining unit:

> All employees employed by the Employer at its plants located in Nassau, Suffolk, Kings, Queens, New York, Bronx and Richmond Counties, State of New York, in the following occupations and job classifications:
>
> Senior Engineer. Engineer, Associate Engineer, Assistant Engineer, Senior Engineer-Materials, Senior Engineer-Components, Engineer-Materials or Components, Associate Engineer-Materials or Components, Assistant Engineer-Materials or Components, Senior Publications Engineer, Publications Engineer, Associate Publications Engineer, Assistant Publications Engineer, Senior Design Engineer, Senior Logistics Specialist, Logistics Specialist, Senior Engineer-Planning, Engineer Planning, Associate Engineer-Planning, Assistant Engineer Planning, Senior Manufacturing Engineer, Manufacturing Engineer, Assistant Manufacturing Engineer, Senior Quality Control Analyst, Quality Control Analyst, Assistant Quality Control Analyst, Plant Engineer, Senior Estimator, but excluding all other employees, office clerical employees, guards and Supervisors as defined in the Act.

The two most recent collective-bargaining agreements, which ran from September 1988 to September 1991, and from September 6, 1991, to February 3, 1995, contain the following, identical provisions:

> All present employees of the Employer, and those who in the future enter the bargaining unit, shall join the Union by the thirtieth day following the beginning of their employment, or by the thirtieth day following the effective date of this provision, whichever is later. and continue to remain members of the Union in good standing as a term and condition of employment.

> The Employer shall deduct each pay period from the wages of all employees who have authorized and directed the Employer in writing to check off their union dues and uniform and duly authorized assessments, an amount equal to the union dues and uniform and duly authorized assessments of such employees as certified in writing by the Union to the Employer. The Employer shall also deduct from the wages of all new employees who have authorized and directed the Employer to make such deduction, an amount equal to the initiation fees as certified in writing by the Union.
>
> The Employer will use its best efforts to remit to the Union the union dues and initiation fees deducted . . . .

Respondents admitted that the fees received from unit employees have been received by the Local, which sends part of such fees to the International and to the District.

Ferriso has been employed by the Employer for nearly 23 years as an electrical engineer, a position covered by the parties' collective-bargaining agreements.

Ferriso joined the Local in September 1974, and resigned his membership in about October 1976. Thereafter, as a dues-paying nonmember of the Local he continued to pay full dues until 1991.

In March 1991, Ferriso read a notice in the IUE News, which notified agency-shop fee payers and nonmembers who are obligated to pay an amount equal to union dues, of the "procedures IUE has established for those persons who seek a reduction of the amounts so paid based on union expenditures for non-collective bargaining matters."

The notice set forth the procedure to be followed by those requesting a reduction in the amounts paid. The requesting party was required to make a written request during the month of April to the International, with a copy to the Local, which request must contain certain identifying information. The notice further stated that the request would then be processed, and "based on non-collective bargaining expenses, the amounts paid by the person to the Union will be reduced, commencing in June."

Finally, the notice stated as follows:

> The person who requests such a reduction will be given a detailed explanation with respect to the basis of the reduction.
>
> If a person who requests the reduction is not satisfied with the detailed explanation and calculations on the reduction sent him or her, such person may challenge IUE's calculation by writing the International Secretary-Treasurer . . . . The challenge will then be submitted to an impartial arbitrator appointed by the American Arbitration Association. In the event of such challenge, the disputed portion of the person's fee or amount shall be held in escrow until the challenge is resolved.

On April 24, 1991, Ferriso sent a letter to the Respondents in which he stated that he sought "a reduction of the amount of dues I pay based on union expenditures for non-collective bargaining matters."

On May 7, 1991, Edward Fire, the secretary-treasurer of the International sent a letter to Ferriso acknowledging his April 24 letter, and stating that "your request is now being processed so that any portion of the per capita payment to the International subject to reduction may be calculated. When these calculations are completed, your monthly payments received by the International Union as a per capita payment from June 1991, through May, 1992, will be reduced by that amount."

On June 7, 1991, the International sent Ferriso a letter which stated that "the information from the 1990 financial records of the International, the District and Local 444 upon which a reduction of the amount of your financial core obligation to the Union can be calculated has now been compiled. You are charged with that portion of the fee attributable to collective bargaining or representational matters."

The letter contained calculations as to Ferriso's total financial obligation to the Respondents, and the respective shares of such obligation to the International, District, and the Local. Thus, Ferriso's financial obligation is 1 percent of his biweekly earnings. The International's biweekly share of that obligation is $4.48; the District's biweekly share is 56 cents; and the Local's biweekly share is 1 percent of his biweekly earnings minus $5.04 which is the sum of $4.48 and 56 cents.

The letter went on to state the chargeable portions of the financial obligation of the entities as follows: International: 58.1 percent; District: 65 percent and the Local: 98.9 percent.

Based upon those percentages, the amounts were calculated as follows: International: $4.48 x 58.1 percent = $2.60; District: 56 cents x 65 percent = 36 cents, and the Local: biweekly pay times 1 percent minus $5.04 x 98.9 percent.

The letter concluded that if Ferriso challenged the calculations he should notify Fire within 15 days. The procedure to be followed after the receipt of the challenge was the same as that set forth in the March 1991 IUE newsletter, set forth above. Specifically, the challenge must be made within 15 days of receipt of the calculations (the June 7 letter) in this case. An impartial arbitrator appointed by the American Arbitration Association will resolve the challenge pursuant to the AAA's Rules for Impartial Determination of Union Fees. During the pendency of the matter, the disputed portion of the challenger's fee is held in escrow.

In short, the calculations given Ferriso enabled him to determine the actual reduction of his dues, based on his salary. However, the figures supplied to Ferriso did not set forth what the Local's expenses were, or the categories of chargeable or nonchargeable expenses. Nor did he receive an independent auditor's certified calculation of the figures.

Thereafter, Ferriso's dues were reduced.[1] It was stipulated that since April 1991, Ferriso has paid dues pursuant to the union-security clause in the collective-bargaining agreement, and that, beginning with the payroll period ending June 30, 1991, he began paying a reduced amount of dues, pursuant to his objection to paying dues for noncollective-bargaining

[1] Respondents attacked Ferriso's credibility based on his uncertainty as to when the reduction in dues was actually received by him. He testified that the reduction was effective in June and July 1991, but his affidavit, dated July 31, 1991, stated that the reduction would take place in the future. I regard this as a very minor matter, not affecting Ferriso's credibility at all.

or nonrepresentational matters. Ferriso's biweekly dues was $19.86 prior to the reduction, and $18.17 on the reduction.[2]

After receiving the International's June 7 letter, Ferriso had not decided whether to challenge the calculations. He was unable to determine whether he could challenge them or not since he did not have enough information. Accordingly, he told shop steward Edward Johnson that he wanted information which would enable him to determine how the calculations were made, and he requested an opportunity to examine the Local's books and records.

Subsequently, Ferriso was told by Local Secretary-Treasurer Francis Bianco that he could look at the Local's books before working hours, from 7 to 8 a.m. Ferriso replied that that time was unacceptable, and that he wanted to examine them during working hours, between 8 a.m. and 5 p.m.

Thereafter, no acceptable time was agreed on, and Ferriso did not examine the Local's books and records.

Johnson and Bianco testified that Ferriso asked them for a copy of a specific document, the Local's financial statement, which was distributed to members at membership meetings. Such statement is a certified report prepared by auditors who perform the Local's audit.

Bianco testified that he did not provide Ferriso with a certified financial statement which set forth the expenses that the Local, District, or International considered to be for representational and nonrepresentational expenses.

Ferriso did not file a challenge to the calculation of the reduction, as set forth in the International's June 7 letter. Rather, he filed the instant charge.

Analysis and Discussion

The complaint alleges that since about April 24, 1991, following Ferriso's objection to having union-security payments spent on nonrepresentational activities, Respondents:

> [F]ailed and refused to disclose to Ferriso, detailed information concerning the breakdown of the major categories of expenses, distinguishing between representational and non-representational expenditures of Respondents . . . and the District; and have failed and refused to verify such information by an independent auditor.

General Counsel's theory is based on the Supreme Court's holding in *Communications Workers of America v. Beck*, 487 U.S. 735 (1988). In *Beck*, the Court held that a union violates its duty of fair representation by using the fees and dues collected from an objecting, dues paying nonmember for activities unrelated to collective bargaining, contract administration, or grievance adjustment.

General Counsel reasons from this that the objector is entitled to information concerning Respondents' expenses, specifically, the categories of representational and nonrepresentational expenses.

This theory has support in *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986). *Hudson*, a case involving public school teachers who were nonmembers of a union, objected to their union's use of part of their dues for noncollective-bargaining purposes. The Supreme Court found inadequate the information that the union had disclosed. The union "identified expenditures" not related to collective-bargaining purposes, and estimated that annual amount at approximately $188,549. That figure was divided by the union's annual income, and a figure of approximately 5 percent was obtained, which constituted the percentage of its income spent on noncollective-bargaining matters. Accordingly, 5 percent of the objectors union dues was deducted.

The Court stated that the information given to objectors should have included the identification of expenditures for collective-bargaining matters, so that they would be aware of why they required to pay their share of 95 percent of the total dues.

Although the Court noted that "there are practical reasons why 'absolute precision' in the calculation of the charge to nonmembers cannot be 'expected or required,'" nevertheless the Court contemplated that certain disclosure was required:

> The Union need not provide nonmembers with an exhaustive and detailed list of all its expenditures, but adequate disclosure surely would include the major categories of expenses, as well as verification by an independent auditor. 475 U.S. at 307 fn. 18.

Respondents argue that *Hudson*, involving public employees and state action which brought into play constitutional concerns, is inapposite to the instant case.

A union which is the exclusive representative of employees, has a duty to represent such employees fairly. A union breaches such duty when its conduct is arbitrary, discriminatory or in bad faith. *Vaca v. Sides*, 396 U.S. 171 (1967). Accordingly, the question here is whether the procedures utilized by Respondents as to the matters at issue here were undertaken in an arbitrary or discriminatory fashion, or were in bad faith.

In *Price v. Auto Workers*, 927 F.2d 88, 93 (2d Cir. 1991), the Second Circuit Court of Appeals dealt with the question of nonmembers' *Beck* objections. The Court held that the union's obligations under *Vaca* were satisfied by the union's providing to objecting nonmembers a report which sets forth (a) the percentage of funds spent for chargeable and nonchargeable activities, (b) the major categories of expenditures, and (c) a statement as to whether the union calls them chargeable or nonchargeable to collective-bargaining activities.

Accordingly, under the *Price* standard, Respondents have not satisfied their obligations under *Vaca*, because they failed to provide the information enumerated in *Price*.

Respondents further argue that Ferriso unreasonably refused to present himself at the Local's office in order to view whatever information the Local was prepared to show him. Ferriso offered to make himself available during working hours, but that was unacceptable to the Local. I find that it was not necessary for him to even make that offer.

The burden is not on the objecting employee, but on the union to provide the information. In *Hudson*, the Court stated, at 306, that the potential objectors should "be given sufficient information to gauge the propriety of the union's fee. Leaving the nonunion employees in the dark about the source of the figure for the agency fee—and requiring them to object in order to receive information does not adequately protect the careful distinctions drawn" in *Abood v. Detroit Board of Education*, 431 U.S. 235 (1977).

[2] Hereby received in evidence is G.C. Exh. 10, a posthearing stipulation with attached copies of checkstubs pursuant to a procedure concerning this matter which was agreed upon during the hearing.

In fact, Ferriso testified that upon receiving the June 7 letter from the International, he was unable to determine whether he could challenge the deduction because he did not have enough information. That prompted him to contact the Local in order to obtain more data upon which to make a determination as to whether to challenge the calculations.

Furthermore, the Supreme Court squarely placed the burden of providing the information on the union, not the employee:

> Since the unions possess the facts and records from which the proportion of political to total union expenditures can reasonably be calculated, basic considerations of fairness compel that they, not the individual employees, bear the burden of proving such proportion. Absolute precision in the calculation of such proportion is not, of course to be expected or required; we are mindful of the difficult accounting problems that may arise. *[Railway Clerks v. Allen*, 373 U.S. 113, 122 (1963).]

The Local relies on *Dashiell v. Montgomery County, MD*, 925 F.2d 750 (4th Cir. 1991), as support for its position that the information sought need not be provided. While it is true that the *Dashiell* court stated that information concerning all available data is not required, the court noted that information must be provided to enable the employee to decide whether to object. The court further stated that "in its initial explanation to nonunion employees, the union must break its expenses into major descriptive categories and disclose those categories or portions thereof which it is including in the fee to be charged . . . and the component dollar amount of each category so chargeable. 925 F.2d at 757. Specifically, in *Dashiell*, the court found that the union provided sufficient information by distributing a list of all expenses of the union, broken down into 35 descriptive categories, and noting which were chargeable to all employees, or only to union members, and assigning a dollar amount to each category.

In contrast, Respondents have provided virtually no information of a descriptive nature to Ferriso in its initial explanation to Ferriso, as set forth in its June 7 letter. That letter clearly would not satisfy the standard set forth in *Dashiell*, relied on by the Local.

There is also support for the complaint's allegation that Respondents were required to have whatever information provided to Ferriso verified by an independent auditor.

In *Hudson*, the Supreme Court stated that "adequate disclosure [of its expenditures] surely would include the major categories of expenses, as well as verification by an independent auditor." 475 U.S. at 307 fn. 18.

Respondents cite *Price*, supra, as support for a finding that an independent auditor is not required. In *Price* the Second Circuit Court of Appeals held that an independent auditor need not audit a union's report of expenditures, where such expenses are subsequently reviewed by an independent arbitrator appointed by the American Arbitration Association (AAA). The court observed that inasmuch as the union bears the burden of proving the chargeable expenditures upon a challenge by an objector, such proof could properly be made before an arbitrator, as opposed to an auditor.

Factually, *Price* and the instant case are inapposite. The union in *Price*, pursuant to its procedures, agreed to send to each objecting nonmember, a report listing the percentage of funds spent for chargeable and nonchargeable activities, as well as the major categories of expenditures, classified as chargeable or nonchargeable to collective-bargaining activities. Based on that report, the nonmember could then file a challenge which is then subject to resolution by an arbitrator.

Here, however, Respondents did not provide Ferriso with any calculations which met the *Price* standard. Because of that, Ferriso was severely limited in his ability to mount a meaningful challenge. Accordingly, Ferriso could not make a proper challenge to such calculations as were provided him. Thus, any challenge made by Ferriso which would be heard by an arbitrator would not be a meaningful challenge since the figures he had to work with were incomplete and did not provide sufficient information to enable him to offer a proper challenge.

Accordingly, the question here is not in the choice between independent auditor and arbitrator. The infirmity is Respondents' failure to provide proper information to Ferriso prior to the challenge. Although, under Respondents' procedures, an arbitrator appointed by the AAA resolves the challenge, this cannot substitute for proper information being provided to Ferriso prior to making a challenge. Such information, in order to have the reliability necessary so that Ferriso and others could base a proper challenge on its calculations, should be verified by an independent auditor, as set forth in *Hudson*.

In *Andrews v. Education Assn. of Cheshire*, 829 F.2d 335, 338 (2d Cir. 1987), the Second Circuit Court of Appeals approved of a procedure whereby potential objectors would receive detailed information concerning expenditures for major categories of chargeable activity. Such information would be verified by independent auditors. Thus, it cannot be said that *Price* stands for the proposition that verified information need not be provided prior to a challenge in any case.

Thus, in the context of this case, where no useful information was provided to Ferriso, it is essential that proper, verified information be sent to him upon his objection.

Respondents argue that this matter should be deferred to arbitration pursuant to *Collyer Insulated Wire*, 192 NLRB 837 (1971). I reject this argument. First, this matter is between an individual and the union, not between the two parties to the contract. Ferriso chose the statutory, and not the challenge-arbitration method to protest the Respondents' actions. Under these circumstances, deferral to arbitration would not be appropriate.

The complaint alleges that the Respondents maintained in effect and enforced the collective-bargaining agreement which contains the allegedly unlawful union-security clause. The International admits the maintenance and enforcement of that clause, but the Local denies that it has enforced it, arguing that there has been no evidence that the Local has requested the discharge of any employee because of failure to pay dues and fees.

The evidence establishes that the collective-bargaining agreement and its union-security clause are in full force and effect. Dues are being deducted by the Employer pursuant to that clause and are remitted to Respondents. I accordingly find that the collective-bargaining agreement has been enforced by the Local.

I accordingly find and conclude that, as set forth in the complaint, Respondents violated Section 8(b)(1)(A) of the Act by their failure to provide Ferriso with detailed informa-

tion concerning the breakdown of the major categories of expenses, distinguishing between representational and nonrepresentational expenses. I also find and conclude that Respondents violated Section 8(b)(1)(A) of the Act by not having such information verified by an independent auditor.

CONCLUSIONS OF LAW

1. Respondent International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO and Respondent Engineers Union, Local 444, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers Union, AFL–CIO, and District Council 3, International Union of Electronic, Electrical, Salaries, Machine and Furniture Workers, AFL–CIO, are labor organizations within the meaning of Section 2(5) of the Act.

2. Paramax System Corporation, formerly known as Surveillance and Fire Control Systems Division and the Systems management Unit of Shipboard and Ground Systems Group, Unisys Corporation, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. Respondents violated Section 8(b)(1)(A) of the Act by failing to provide objectors with detailed information concerning the breakdown of the major categories of expenses, distinguishing between representational and nonrepresentational expenditures of Respondents, and by failing to have such information verified by an independent auditor.

REMEDY

Having found that Respondents have engaged in, and are engaging in, certain unfair labor practices, I shall recommend that they cease and desist therefrom and that they take certain affirmative action designed to effectuate the policies of the Act.

As I have found that Respondents violated the Act by failing to provide objectors with certain information, I shall recommend that Respondents be ordered to issue a report of their expenses, in detail, to those filing objections to having their dues and fees pay for nonrepresentational expenses. I shall also recommend that Respondents be ordered to reimburse the Charging Party for any amounts that he has been improperly charged. Such reimbursement shall be in accordance with the interest computation in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact, conclusions of law and the entire record, I issue the following recommended[3]

ORDER

Respondent International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO and Respondent Engineers Union, Local 444, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers Union, AFL–CIO, their officers, agents, and representatives, shall

1. Cease and desist from

(a) Providing nonmembers with financial information which provides them with information which is insufficient for them to make an informed choice as to whether to object to any of the expenses incurred by Respondents.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Provide Lawrence Ferriso with detailed information, which has been verified by an independent auditor, concerning the breakdown of the major categories of expenses, distinguishing between representational and nonrepresentational expenditures of Respondents.

(b) Refund, with interest, all fees and assessments paid by Lawrence Ferriso which were not properly chargeable to him within the meaning of *Communications Workers of America v. Beck*, 487 U.S. 735 (1988), as expenditures for collective-bargaining purposes.

(c) Post at their offices copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in consecutive places including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Mail a copy of said notice to the Charging Party.

(e) Forward to the Regional Director for Region 29 signed copies of the notice sufficient in number for the Employer, if willing, to post at its facilities.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondents have taken to comply.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."